



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,123	10/25/2005	Gert Joly	L0006/US	8388
30522 7590 09/28/2009 KRATON POLYMERS U.S. LLC 16400 Park Row HOUSTON, TX 77084				
EXAMINER				
EGWIM, KELECHI CHIDI				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
09/28/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

kratonip@kraton.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/537,123

**Applicant(s)**

JOLY ET AL.

**Examiner**

Dr. Kelechi C. Egwim

**Art Unit**

1796

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 11-21.  
Claim(s) withdrawn from consideration: 22-33.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Dr. Kelechi C. Egwim/  
Primary Examiner, Art Unit 1796

Continuation of 11. does NOT place the application in condition for allowance because: Firstly, applicant is reminded that the rejections are 102/103 rejection not 102 rejections or simply 103 rejections.

The prior art teaches each and every component of applicants' composition. The fact that applicant claims a property of one of the prior art taught components that is not indicated in the prior art does not distinguish that component or the composition in the prior art from what applicant is claiming.

Regarding Ouhadi, contrary to applicant's assertions, the reference teaches a non-polar thermoplastic blend comprising an S-(IB)-S block copolymer and thermoplastic polyolefin (the second thermoplastic resin)( 15, 31 and 32).

While applicant cited the rejections wherein "the butadiene/isoprene blocks in the styrene block copolymers of the prior art would possess the presently claimed properties since the composition of the prior art block copolymers are essentially the same as that claimed composition", a statement supported by the fact that the components of the prior art are the same as the claimed components, applicant responds my saying that "the properties of the SBC are not essentially the same", with no evidence to support their conclusion and without addressing the statement with regard to the components of the composition being essentially the same.

Applicant also argues against that the "compatibilizer" and "thermoplastics that incorporate nitrogen, oxygen, or halogen in their molecular structure" in the prior art, none of which are excluded from the present invention as claimed.

Regarding Zhang et al. and Varma, applicant argues that "(d)espite the similar structure, neither Zhang et al. nor Varma teach Applicant's specific invented SBC" because the references do not evaluate the same properties recited in applicant's claims. However, the Examiner has met the burden of presenting prior art that has the same structure and composition of applicants claims, short of the recited properties. The burden is now on Applicant to demonstrate that "despite the similarity in the structure", the prior art compositions/components do not possess the recited properties of said structure. Applicant has failed to meet that burden. Simply saying that the prior art do not have the claimed properties is not sufficient proof to that effect, nor is the failure of the prior art to explicitly recite said properties.

Applicant also argues that "Zhang et al. require the composition to include at least one vinyl arene." Again, even if so, the present claims do not exclude such components.

In response to applicant's argument that the focus of the prior art is different from the focus in the present claims, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. In this case, the structure of the compositions the same.